FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
SEPTEMBER 1, 2009

CALL TO ORDER

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Board members present was Scott Hollinger, Gina Klempel, Craig Wagner, Mark Hash and Gary Krueger. Bailey Iott and Jeff Harris represented the Flathead County Planning & Zoning Office.

There was one person in the audience.

APPROVAL OF MINUTES

Klempel moved and Wagner seconded to approve the July 7, 2009 and August 4, 2009 meeting minutes.

The motion passed by quorum.

PUBLIC COMMENT
(not related to agenda items)

None.

BIGFORK PLAYHOUSE CHILDREN'S THEATER (FZV 09-04)

A request by Bigfork Playhouse Children's Theatre for a Zoning Variance to property within the Bigfork, R-1 (Suburban Residential) Zoning District. The applicants are requesting a variance to Sections 6.11.040, 6.11.060 and 6.16.050 of the Flathead County Zoning Regulations with regard to parking requirements. The property is located at 833 Grand Avenue in Bigfork.

STAFF REPORT

Bailey Iott reviewed Staff Report FZV 09-04 for the Board.

BOARD QUESTIONS

Klempel asked if there were landscaping previously on the property.

Iott said there was some but it was not a buffer. There is grass and a few trees up to where the paved parking areas are currently.

APPLICANT PRESENTATION

Brach Thomson, the Artistic Director for the Bigfork Playhouse Children's Theater, had nothing to add. He said he was available for questions and spoke about the future projects for the theater. They hoped to open an after school performing arts center where they would offer dance, music, voice, and acting workshops. They have teamed up with an after school program where they

will offer middle school and high school tutoring in a designated section. It has a kitchen facility so they can offer children on the free or reduced school lunch program an after school snack.

BOARD QUESTIONS   None.

AGENCY COMMENTS   None.

PUBLIC COMMENT   None.

APPLICANT REBUTTAL   None.

STAFF REBUTTAL   None.

BOARD DISCUSSION   Wagner said it should be noted that the Flathead Bank would allow people to park in their parking lot as overflow parking for the theater.

Thomson said they have a letter stating that fact.

MAIN MOTION TO ADOPT F.O.F. AND APPROVE THE VARIANCE   Wagner made a motion seconded by Klempel to adopt Staff Report FZV 09-04 as findings-of-fact and approve the variance to Sections 6.11.040, 6.11.060 and 6.16.050 of the Flathead County Zoning Regulations.

BOARD DISCUSSION   None.

ROLL CALL TO ADOPT F.O.F. AND APPROVE THE VARIANCE   On a roll call vote the motion passed unanimously.

DISCUSSION   Harris stated that for the board's information staff doesn't typically bring forward a Conditional Use Permit (CUP) only to have it trailed by a variance; but there are times in a CUP

evaluation that the variance issue comes up later. Since the applicant wouldn't have submitted a variance application, staff would have had to deal with it at the time of the CUP review. The choice would be to hold the application or bring it to the board and have it conditioned subject to the variance coming back before the board for approval.

OLD BUSINESS Hollinger gave a brief description from the last month's meeting discussion regarding updating the bylaws.

MOTION TO ADOPT AMENDED BYLAWS Wagner made a motion seconded by Klempel to adopt the Rules of Procedure General Governing Rules as amended.

BOARD DISCUSSION Hash stated the board used to hear public comment in favor and then in opposition of a particular file. He wondered if combining those for public to speak either for or against made it easier for the board or the public and did staff recommend that.

Staff commented it was not necessary to separate the two.

Hollinger commented it seemed more constructive to him this way.

The board and staff discussed making the process easier or more streamlined in regards to public speakers.

ROLL CALL TO ADOPT AMENDED BYLAWS On a roll call vote the motion passed unanimously.

OLD BUSINESS *(CONTINUED)* Harris stated although it was not on the agenda for the evening, the board needed to appoint a new Vice-Chair.

Klempel nominated Wagner for Vice-Chair. There were no other nominations.

On a roll call vote the motion passed unanimously.

NEW BUSINESS Staff let the board know what would be coming up at their next meeting.

Klempel commented about the CUP that had been approved and

thought the planner should have been aware a variance was needed as the parking was not up to snuff.

Harris said she was right and stated part of the problem was a pre-application meeting is not required for any zoning applications like for subdivision applications. It would have been picked up at one of those meetings before an application was submitted if a variance was required. Once an application is submitted to the office it might be several weeks before a planner begins a review and sometimes staff doesn't catch it.

Krueger spoke about the cost of the files individually and zoning on the property. He talked about how certain properties are conforming or in compliance before zoning is put in place and once zoned that makes them non-conforming so they have to ask for a variance. He said it was the zoning that was not conforming.

Harris said a non-conforming use can continue as it was before property is zoned but if a person abandons the structure or the use for 180 days then they would lose the non-conforming status. Zoning Districts have a list of permitted uses and conditional uses and some of those uses do not require a variance. In this particular case, the applicant did not know he would need a variance, he was told during the review period.

Krueger stated if the board went by the Flathead County Zoning Regulations (FCZR), they should not have approved a CUP without the variance in place. If an application is found to be contrary to the regulations, it can't be ignored, the board is supposed to deny it according to state law and Montana Code Annotated (MCA). The CUP should not have been permitted until the variance was approved.

Hash said Krueger was correct. A CUP is different than a variance, it's a privilege and each of the strict requirements or criteria must be met. If the board is going to still allow it they can make it a condition of the CUP to get the variance.

Krueger said the board could have continued the CUP or tabled it until the variance was approved. He thought the zoning regulations could be amended to state when a CUP is required and needed a variance that both of those be reviewed at the same time.

Harris stated that could be done but in this case staff wasn't aware a variance was needed when the application was originally submitted. Staff could amend the regulations stating a CUP cannot be issued without having previously obtained all the variances.

Hash commented that would be hard on the applicant, they need the flexibility to make choices because a lot of the time they don't know what they might be doing.

Klempel said they've done CUP approvals and variances all in one meeting.

Hash commented about Krueger's statement regarding lying zoning over a non-conforming lot and it being unfair to the property owner. He said historically the board has been a release valve for property owners in such a situation. He said if there is a non-conforming lot and zoning is overlaid and then someone else bought the lot and wanted some sort of release, the board would look at that differently.

Hollinger gave some history of the property and stated the applicant bought it knowing he would have to go through the CUP process.

The board discussed the fact many properties in Bigfork would never meet certain requirements and the future of those lots.

Hollinger stated downtown Bigfork had its own set of rules for parking.

ADJOURNMENT The meeting was adjourned at approximately 6:30 pm. on a motion by Wagner. The next meeting will be held at 6:00 p.m. on October 6, 2009.

_____   _____
Scott Hollinger, President   Mary Sevier, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 10/6/09